

Application No. 10/806,311

REMARKS

Claims 1-14 and 21-29 are pending. By this amendment, claim 1 has been amended, and no claims have been added or cancelled. Amendments to claim 1 is supported by, for example, at col. 22, line 1-col. 27, line 45 of U.S. Patent 5,200,248 to Thompson et al., which was incorporated by reference in the instant application on page 24, line 30-page 25, line 2. No new matter is introduced by the amendments.

All of the pending claims stand rejected. Applicant respectfully requests reconsideration of the rejections based on the following remarks.

Drawings

The drawings were objected to under 37 CFR 1.83(a) for failing to include a reference number for *surface capillaries*. Applicants maintain that they are not required to include a reference number for *surface capillaries* because drawings of the fibers are included and the fibers comprise surface capillaries. 37 CFR 1.83(a) only requires that drawings in a non-provisional application show every feature of the invention specified in the claims NOT provide a reference number for every claimed feature. The drawings of the instant application show fibers comprising surface capillaries, but these features are microscopic and invisible to the naked eye. The Rule further indicates that features that are not essential to an understanding of the structure can be included schematically in the drawings. Applicants also refer Examiner to U.S. Patent 5,200,248 to Thompson et al., which was incorporated by reference in the instant application on page 24, line 30-page 25, line 2. Surface capillaries can be seen, for example, in figs. 24 and 25 of the Thompson et al. patent. The MPEP suggests that drawings can be incorporated by reference. See MPEP 2163.07 ("Instead of repeating some information contained in another document, an application may attempt to incorporate the content of another document or part thereof by reference to the document in the text of the specification."). For

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these reasons, the figures comply with the Patent Rules, and Applicant respectfully request withdrawal of the objection.

Claim Rejections – 35 USC 102

1. Claims 1, 5-10, 12-14, and 21-29 were rejected under 35 USC 102(b) as being anticipated by Purdy (US 5,693,067). Claim 1 has been amended to more particularly point out Applicants' invention. Claims 1-14 and 21-29 are allowable over Purdy because Purdy fails to *prima facie* anticipate or render obvious these claims.

Regarding claim 1, Purdy fails to disclose or suggest "fibers comprising a polymer and having surface capillaries that are formed through extrusion of the polymer through a die." Applicants recognize that the feature is written in a product-by-process form. Regardless, the MPEP states that the structure imparted by the process should be considered in evaluating patentability, especially when the process imparts distinctive structural characteristics. See MPEP 2113 ("The structure implied by the process steps should be considered when assessing the patentability of product-by-process claims over the prior art, especially where the product can only be defined by the process steps by which the product is made, or where the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product.").

Purdy fails to disclose the distinctive structure of the surface capillaries on a polymer fiber imparted by extruding the polymer through a die and provides no reason why one of ordinary skill would want the unique surface capillaries on the polymer fiber created by extruding the polymer through a die. In particular, extrusion through a die imparts a characteristic surface capillary structure that is not disclosed or suggested by Purdy.

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In the response to Applicant's previous arguments, Examiner argued that col. 6, lines 25-20 of Purdy discloses some materials that are inherently porous. First, Purdy does not address the porosity of these materials. Second, these materials are used in lead element 24 NOT expansion members 108 that Examiner refers to as fibers, and they are different elements disclosed in different embodiments. Third, Examiner failed to accord surface capillaries the broadest reasonable interpretation consistent with the specification by interpreting potential pores in the material used to make the fiber as surface capillaries. Both dictionary definitions and the Thompson et al. patent that is incorporated by reference in the instant application clearly distinguishes surface capillaries from pores. One of ordinary skill in the art would not interpret surface capillaries as pores. Fourth, any pores would not have characteristics of the structure formed by extrusion through a die.

Since Purdy fails to disclose all the features of the claimed invention, Purdy fails to *prima facie* anticipate or render obvious claims 1-14 and 21-30. Accordingly, these claims are allowable over Purdy. While Applicants do not acquiesce in the assertions regarding the dependent claims, these issues are not discussed further in view of the discussion of claim 1 above that makes the issues of the dependent claims presently moot.

2. Claims 1, 5, 9, 10, 13, 14, and 21-29 were rejected under 35 USC 102(e) as being anticipated by Macoviak et al. (US 6,395,014). Claim 1 has been amended to more particularly point out Applicants' invention. Claims 1-14 and 21-29 are allowable over Macoviak et al. because Macoviak et al. fail to *prima facie* anticipate or render obvious these claims.

Regarding claim 1, Macoviak et al. fail to disclose or suggest "fibers comprising a polymer and having surface capillaries that are formed through extrusion of the polymer through a die." Macoviak et al. fail to disclose or suggest the distinctive structure of the surface capillaries on the polymer fiber imparted by extruding the polymer through a die.

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Since Macoviak et al. fail to disclose all the features of the claimed invention, Macoviak et al. fail to *prima facie* anticipate or render obvious claims 1-14 and 21-30. Accordingly, these claims are allowable over Macoviak et al. While Applicants do not acquiesce in the assertions regarding the dependent claims, these issues are not discussed further in view of the discussion of claim 1 above that makes the issues of the dependent claims presently moot.

Claim Rejections – 35 USC 103

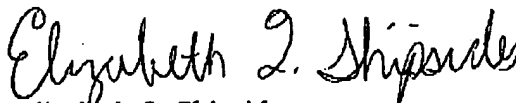
Claims 2-4 and 11 were rejected under 35 USC 103 as being unpatentable over Purdy (US 5,693,067). The shortcomings of Purdy with respect to the independent claims are discussed in detail above. Based on these arguments, Purdy clearly does not render claims 2-4 and 11 *prima facie* obvious. While Applicants do not acquiesce in the assertions regarding the dependent claims, these issues are not discussed further in view of the discussion of claim 1 above that makes the issues of the dependent claims presently moot.

CONCLUSIONS

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,


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